No. 10-561

In The
Supreme Court of the United States

SAMUEL Y. SUNG and YOUNG HEE SUNG, as husband and wife; MORNING STAR WORLD MISSION,

Petitioners,

v.

TAE Y. CHOI, INMIN KIM, and MYUNG SOON HILTON, as representatives of the NEW HOPE CHRISTIAN REFORMED CHURCH OF TACOMA, f/k/a NEW HOPE CHRISTIAN REFORMED CHURCH, and REVEREND TIMOTHY TOESET, as representative of the CLASSIS PACIFIC NORTHWEST OF THE CHRISTIAN REFORMED CHURCH OF NORTH AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Washington, Division 2

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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I. STATEMENT OF THE CASE

Petitioners' Statement of the Case contains many assertions that are exaggerated, disputed, or simply not supported by the record below. Respondents refer this Court to the Opinion of the Court of Appeals of the State of Washington (Petitioners' App. A) and the trial court's Findings of Fact and Conclusions of Law (Petitioners' App. B), and for a statement of the facts that were resolved below.

In brief: This case arose from a dispute between the elected leadership of a church, as represented by Respondents, and a retired former minister of the church, Petitioner Samuel Sung. In the midst of the dispute, Sung declared that the church leaders were illegitimate, seized control of the church property, and locked out the congregation. (Petitioners' App. B, ¶¶ 11-12). In accordance with church rules, the congregation and its leaders appealed to the denominational authorities – the Classis Pacific Northwest (the "Classis") of the Christian Reformed Church of North America ("CRCNA") – to resolve the dispute. (*Id.*, ¶¶ 14-15). Classis investigated and concluded that Respondents represented the church leadership, and that Sung had no authority over church property. (*Id.*, ¶ 15). When Sung still refused to cede control of the property, this litigation followed. (*Id.*, ¶ 17).

The trial court's resolution of the matter was based on two essential findings: (1) the church was at all relevant times a member of the CRCNA, and bound by church rules; and (2) under church rules,

the Classis was authorized to resolve a dispute concerning the legitimacy of church leadership. (*Id.*, ¶¶ 1, 15, 22-25).

The trial court viewed the Classis' resolution of the matter – that the Respondents were legitimate leaders of the church – as correct. (*Id.*, ¶ 25). But in any case, the court recognized that questions concerning the credentials and legitimacy of church leaders were questions for the church, and not the courts, and thus the Classis' resolution should be upheld under the "deference rule" as applied in Washington. (*Id.*, ¶¶ 22-25).

The trial court further concluded that even if the deference rule did not apply, and the court were to follow the alternate "neutral principles of law" approach advocated by Sung, the result would be the same. Sung had contracted to retire from the ministry and relinquish any position of authority in the church; the trial court concluded this agreement was binding on Sung, and equally justified the result under the "neutral principles" approach. (*Id.*, ¶ 19, 29).

A three-member panel of the Washington State Court of Appeals affirmed the trial court, and the Washington Supreme Court declined further review.

II. ARGUMENT

Sung attempts to frame this case as an opportunity for this Court to modify well-settled first

amendment principles and formally abandon the "compulsory deference" rule first set out in *Watson v. Jones*, 80 U.S. 679 (1871). This case presents an exceptionally poor vehicle to consider these arguments.

First, application of the deference rule in this case did not require the lower courts to "entangle" themselves in religious questions. The courts recognized that under the church's own rules of governance, the Classis was empowered to resolve questions regarding the legitimacy of church leadership. By deferring to the Classis' resolution of these issues, the courts *avoided* the need to resolve the essentially ecclesiastical arguments advanced by Sung – whether certain individuals were or were not "legitimate" or qualified to hold positions in the church in accordance with church rules.

Sung seizes on the fact that church rules, as recited by the trial court, allowed that Classis' decision would not be binding if it were shown to be "contrary to the word of God." (*Id.*, ¶ 18). But the question of whether a church decision is contrary to the word of God is properly a matter for further resolution and appeal within the church; there is no indication that the decisions below were based on the courts' own attempted resolution of such questions.

Second, any argument that the lower courts should have followed the "neutral principles" approach is moot in this case, given the trial court's conclusion that the result would be the same under

either test. (*Id.*, ¶ 19, 29). In fact, there is no available legal doctrine that would justify the result Petitioners seek. As the trial court concluded:

> This case really comes down to a simple question with a simple answer: Does a retiring church minister get to take church property with him when he retires? Of course not, but that is essentially what Reverend Sung is asking me to rule.

Any review of the constitutional issues discussed in Petitioners' brief should be based on a more compelling set of facts, and a more thorough treatment of questions that actually mattered in the courts below.

III. CONCLUSION

Respondents respectfully request that the Court deny this Petition.

Dated this 29th day of November, 2010.

Respectfully submitted,

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